

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA)

IN RE:	:	
THEODORE M FAIRFAX, III	:	BK. No. 15-14386-amc
Debtor	:	
	:	Chapter No. 13
WELLS FARGO BANK, N.A.	:	
Movant	:	
v.	:	
THEODORE M FAIRFAX, III	:	
Respondent	:	11 U.S.C. §362

**MOTION OF WELLS FARGO BANK, N.A. FOR RELIEF FROM AUTOMATIC STAY
UNDER §362 PURSUANT TO BANKRUPTCY PROCEDURE RULE 4001**

Movant, by its attorneys, PHELAN HALLINAN DIAMOND & JONES, LLP, hereby requests a termination of Automatic Stay and leave to foreclose on its mortgage on real property owned by THEODORE FAIRFAX III.

1. Movant is **WELLS FARGO BANK, N.A.**

2. Debtor(s) executed a promissory note secured by a mortgage or deed of trust.

The promissory note is either made payable to Creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust.

3. THEODORE FAIRFAX III is the owner of the premises located at **1710 UPLAND STREET, CHESTER, PA 19013-6723**, hereinafter known as the mortgaged premises.

4. Movant is the holder of a mortgage on the mortgaged premises.

5. Debtor's failure to tender monthly payments in a manner consistent with the terms of the Mortgage and Note result in a lack of adequate protection.

6. Movant wishes to institute foreclosure proceedings on the mortgage because of Debtor's failure to make the monthly payment required hereunder.

7. The foreclosure proceedings to be instituted were stayed by the filing of the instant Chapter 13 Petition.

8. As of March 18, 2019, Debtor has failed to tender post-petition mortgage payments for the months of January 2019 through March 2019. The monthly payment amount for the

month of January 2019 is \$1,193.21, payment amount for the months of February 2019 through March 2019 is \$1,197.11 each, for a total amount due of \$3,587.43. The next payment is due on or before April 1, 2019 in the amount of \$1,197.11. Under the terms of the Note and Mortgage, Debtor has a continuing obligation to remain current post-petition and failure to do so results in a lack of adequate protection to Movant.

9. Movant has cause to have the Automatic Stay terminated as to permit Movant to complete foreclosure on its mortgage.

10. Movant specifically requests permission from the Honorable Court to communicate with Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law.

11. Movant, its successors and assignees posits that due to Debtor's continuing failure to tender post-petition mortgage payments and the resulting and ever increasing lack of adequate protection that said failure presents, sufficient grounds exist for waiver of Rule 4001(a)(3), and that Movant, its successors or assignees should be allowed to immediately enforce and implement the Order granting relief from the automatic stay.

12. Movant requests that if relief is granted that Federal Rule of Bankruptcy Procedure 3002.1 be waived.

WHEREFORE, Movant respectfully requests that this Court enter an Order;

a. Modifying the Automatic Stay under Section 362 with respect to **1710 UPLAND STREET, CHESTER, PA 19013-6723** (as more fully set forth in the legal description attached to the Mortgage of record granted against the Premises), as to allow Movant, its successors and assignees, to proceed with its rights under the terms of said Mortgage; and

b. Movant specifically requests permission from this Honorable Court to communicate with Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law; and

c. Holding that due to Debtor's continuing failure to tender post-petition mortgage

payments and the resulting and ever increasing lack of adequate protection that said failure presents, sufficient grounds exist for waiver of Rule 4001(a)(3), and that Movant, its successors or assignees, should be allowed to immediately enforce and implement the Order granting relief from the automatic stay; and

- d. Waiving Federal Rule of Bankruptcy Procedure 3002.1; and
- e. Granting any other relief that this Court deems equitable and just.

/s/ Jerome Blank, Esquire
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